IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

MONDAY, THE 24TH SEPTEMBER 2007 / 2ND ASWINA 1929

CRL.A.No. 129 of 1998(S)

ST.429/1990 of CHIEF JUDICIAL MAGISTRATE COURT, THRISSUR

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APPELLANT/COMPLAINANT:

SATHI RAJAN,W/O.LATE P.V.RAJAN,
PANDARATHIL HOUSE, CHIYYARAM P.O.,
THRISSUR.

BY ADV. SRI.P.V.CHANDRA MOHAN

RESPONDENTS/ACCUSED:

1.V.A.SREEKANTAN NAIR,
PROPRIETOR, SCREENO CRAFTS,
MARKET ROAD, ERNAKULAM, KOCHI.

3.STATE OF KERALA, REP. BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY ADV. SRI.V.P.REGHURAJ
PUBLIC PROSECUTOR SRI.THOMAS JOHN AMBOOKARAN FOR R2
SRI.K.P.BALAGOPAL
SRI.DILEEP.A.S. FOR R1

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 24/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY, J.

Crl.A.No.129 OF 1998 (A)

Dated this the 24th day of September, 2007

J U D G M E N T

This appeal was filed by the complainant against the acquittal of the 1st respondent for an offence punishable under Section 138 of the Negotiable Instruments Act by order dated 3rd January 2007. I have found after detailed consideration that appellant is liable to be convicted. But since the accused 1st respondent submitted that he wanted to settle the matter and needed some more time, I remanded the matter for imposition of sentence to the Magistrate Court and I also stated that parties are free to settle the matter before the next date of posting before the Magistrate and the case was directed to be posted on 5.2.2007 by the Magistrate Court. But instead of settling the matter, 1st respondent filed appeal to the Supreme Court and Honourable Supreme Court did not interfere with the conviction but observed in the order in Special Leave to Appeal

(Crl).No.4389/2007 dated 22.8.2007 that the sentence also should be decided by the same court and only question left to be decided is the question of sentence. The amount involved in the cheque was Rs.20,000/-. I have heard the counsel for the accused and counsel for the complainant at length regarding quantum of punishment. The Apex Court has held that compensation ordered in 138 case is in the nature of damages as in civil case and it must be proportionate to the damages suffered by complainant. Cost and interest also can be taken into account ***(See Dilip S. Dahanukar v Kotak Mahindra Co. Ltd. and another ((2007) 6 SCC 528).*** It was submitted by the counsel for the accused that sentence should be reasonable. It was submitted by the counsel for the complainant that since he is convicted for offence under Section 138, serious view is required and compensation also should be granted. In the above circumstances, I impose sentence of three months imprisonment and Rs.25,000/- as compensation and on realisation of the compensation amount, it should be paid to the appellant. If the amount of compensation is not paid, it can be realised as provided under

Section 421 read under Section 431 of Crl.P.C. Registry is directed to sent the judgment to the Chief Judicial Magistrate for implementation as provided under Section 388 of the Cr.P.C. With the above observations this criminal appeal is allowed.

J.B.KOSHY, JUDGE

prp

J.B.KOSHY

Criminal.Appl.129 OF 1998

J U D G M E N T

24th September, 2007